Central Motors Corporation and Central Cadillac Company *and* Stanley Collins. Case 8-CA-13309

16 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND ZIMMERMAN

On 27 July 1981 Administrative Law Judge Stephen J. Gross issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

We agree with the judge's finding that the Respondent violated Section 8(a)(1) of the Act when its executive, David Ecklund, told an employee that, if the shop went union, the Company would close it down. We disagree, however, with his finding that Foreman Dan Thornhill's statement to employees that if they did not get back to work they would be fired violated Section 8(a)(1), and with his findings that the discharges of Julius and Stanley Collins violated Section 8(a)(1) of the Act.

The relevant facts are as follows. The Respondent, found by the judge to be a single employer, operates two highly integrated businesses. The first, Central Cadillac, is engaged in the retail sale of new and used automobiles, with the servicing needed for used cars done at the second, Central Motors. All of the Central Motors and Central Cadillac executive offices are in the Central Cadillac building about a mile away from the Central Motors shop. This case involves the Central Motors employees, who were dissatisfied with their wages and working conditions and appealed to their foreman, Thornhill, to convey their unhappiness to higher mangement. Thornhill was sympathetic to the employees' plight and expressed their concerns to his superiors, but he was told that no wage increases or improved working conditions would be forthcoming.

At 9 a.m. on 10 September 1979 Thornhill called a meeting of employees to inform them of management's rejection of their requests. The employees reacted loudly and angrily, particularly brothers Julius and Stanley Collins, the group's informal spokesmen. Because the employees were so disturbed, Thornhill suggested that one of them accompany him downtown to the executive offices to talk directly with management about the decision. After S. Collins refused, employee Sam McKnight and Thornhill went downtown and met with the executive David Ecklund about the possibility of a wage increase. It was at this meeting that Ecklund told McKnight that if Central Motors unionized it would be closed down, and thus violated Section 8(a)(1) of the Act. Ecklund also reiterated the Company's decision not to grant wage increases.

Soon after, McKnight and Thornhill returned to the Central Motors facility. The employees gathered around McKnight at the facility's service desk to discuss management's response to their requests. Thornhill did not join in the meeting, but proceeded to his own office.

About 10 or 20 minutes later, according to the judge, Thornhill left his office, joined the employees in the service desk area, and told them to get back to work or they would be fired. The judge found that Thornhill knowingly interrupted the employees' meeting and unlawfully threatened them with discharge if they did not return to work. We do not agree that Thornhill's statement was unlawful. Thornhill had allowed the employees to discuss the meeting between Ecklund and McKnight, and, after a reasonable time, he ordered them back to work. He had already called one meeting earlier that morning in which the employees ventilated their grievances, and he had even taken the time to go downtown with McKnight and talk to upper level management. When he and McKnight returned, he allowed still more discussion. We find that Thornhill was acting within the bounds of his authority when he finally told the employees, who were on working time, to get back to work. The employee discussion was at this point no longer protected concerted activity.

J. Collins responded to the order to return to work by arguing with Thornhill over management's decision, stating, "if they feel like that about us downtown . . . why don't they just close the place up and just fire everybody." Thornhill informed J. Collins that his work had been unsatisfactory and that he had better get working on a car that was needed. When Thornhill again ordered J. Collins to work, J. Collins responded, "you don't like what I'm doing, — fire me." Thornhill again told him to get to work, and J. Collins replied as

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

he had previously. Thornhill then discharged J. Collins because, as found by the judge, Thornhill felt he had "no choice" and "was pushed into it." We find that when J. Collins refused to return to his duties and dared Thornhill to fire him, using obscene epithets, Thornhill lawfully discharged him for gross insubordination.

We also disagree with the judge's finding that the Respondent's discharge of Stanley Collins later that day was violative of the Act. Shortly after his brother's firing, S. Collins decided to leave work and go to the IAM union hall to talk to some union officials. On his way out, accompanied by McKnight, he was confronted by Thornhill, who demanded to know where they were going. An argument followed, with Collins and Thornhill becoming so agitated that at one point Thornhill threatened to "blow off the top of [S. Collins'] head." During the confrontation S. Collins said he wanted to leave the shop for awhile, and Thornhill agreed, but warned him to be back in an hour or he would be fired. At some point S. Collins referred to Thornhill's firing of J. Collins. S. Collins and McKnight then left for the union hall, accompanied by J. Collins. At the union hall, S. Collins was given a pack of authorization cards and he, McKnight, and J. Collins returned to Central Motors, arriving less than an hour after they had left. S. Collins distributed the authorization cards to each of the employees in the shop. The judge found that at least some of the employees signed cards. He found that S. Collins put the cards in his shirt pocket where they were clearly visible.

Shortly thereafter, Thornhill, who was unaware of the union activity, called S. Collins into his office and told him he was fired for threatening him, presumably during the argument which preceded S. Collins' trip to the union hall. Employees who witnessed the incident told Thornhill that it was he who had threatened S. Collins, not the other way around. Thornhill then stated that S. Collins was fired for shoddy workmanship.

We disagree with the judge's finding that Thornhill fired S. Collins for his protected concerted activity. The judge found that Thornhill's actual reasons for firing S. Collins were unclear, but he rejected the contention that knowledge of the authorization cards had anything to do with it[2] and did not credit Thornhill's statement that he felt threatened by S. Collins. Rather, the judge found that it was S. Collins' aggressive support of the employees' wage and working condition demands and his vociferous criticism of management's behavior that caused Thornhill to discharge him.

Thornhill had been highly sympathetic to his employees' requests for higher wages and better working conditions. He had appealed to his superiors to grant their requests. That morning he had called a meeting to tell of management's decision, at which he allowed the employees to air their grievances once more. He then took McKnight with him to the executive offices to ask management again to consider the employees' needs. When he returned from that encounter, he allowed McKnight 10 to 20 minutes to tell the others what had happened downtown. Clearly, Thornhill was not trying to discourage the employees from working toward higher wages and better working conditions. To the contrary, he had been their advocate and had related their requests to management on more than one occasion. After providing the employees with a full opportunity to discuss their complaints, Thornhill acted properly in demanding their return to work. This resulted in the altercation which culminated in J. Collins' discharge for insubordination. S. Collins was fired later in the day following a personal argument with Thornhill which touched on his brother's discharge and during which Thornhill threatened S. Collins with violence. Clearly, Thornhill had been upset by this confrontation and fired S. Collins as a result. The timing of the discharge, following closely on the heels of the heated exchange between S. Collins and Thornhill, strongly indicates that a personal argument motivated the discharge. Thus, we find that under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved by the Supreme Court in *NLRB v. Transportation Management Corp.*, 103 S.Ct. 2469 (1983), the General Counsel has failed to establish a prima facie case that S. Collins was discharged for protected concerted activity, and we shall therefore dismiss this allegation as well.

ORDER

The National Labor Relations Board orders that the Respondent, Central Motors Corporation and Central Cadillac Company, Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

[2] The General Counsel argued that Thornhill fired S. Collins because of his distribution of union authorization cards. The judge, finding no evidence that Thornhill was concerned about union activism, and that the Respondent's union animus would have meant little to him, credited Thornhill's denial that he knew anything about the cards at the time he discharged S. Collins. The judge found that Thornhill had already decided to fire S. Collins before the cards were handed out, that Thornhill was away from the shop while they were being distributed, and that Thornhill's agitated state at the time he called S. Collins into the shop was such that Thornhill would probably not have noticed the ends of the union authorization cards in S. Collins' pocket.

(a) Threatening employees with closure of its shop if they choose to be represented by a union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its Cleveland, Ohio facilities copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER ZIMMERMAN, dissenting in part.

For the reasons set forth below, I dissent from my colleagues' reversal of the judge's findings that the Respondent violated Section 8(a)(1) when Foreman Dan Thornhill interrupted the employees while they were involved in protected concerted activity and told them if they did not get back to work they would be fired, and when Thornhill fired brothers Julius and Stanley Collins for engaging in protected concerted activity.

Central Cadillac is in the business of selling new and used automobiles, the used ones being serviced before sale by Central Cadillac's affiliate, Central Motors Corporation. The executive offices of both Central Motors and Central Cadillac are in the Central Cadillac building, about a mile away from the Central Motors shop. On the morning of 10 September 1979,[1] Central Motors' shop foreman, Thornhill, called a meeting of the employees, the subject of which was the employees' previously expressed wage and working condition complaints. Thornhill informed the employees that their requests for improvements had been categorically denied by upper management and that no raises or changes in the shop's lighting or ventilation were being considered. This announcement provoked loud expressions of anger from the employees, particularly S. and J. Collins, who had acted as informal spokesmen for the group on such matters. In response, Thornhill offered to take a representative of the employees downtown to the Company's office to meet directly with executive David Ecklund about the decision. Shortly thereafter, Thornhill and employee McKnight met with Ecklund who confirmed Thornhill's report that no wage increases or improvements would be forthcoming, and then warned McKnight that "in the event that Central Motors were unionized, we would have to close it down." The majority agrees with the judge, as I do, that this threat violated the Act.

Upon their return to Central Motors, Thornhill went directly to his office, and McKight proceeded to tell the other employees of management's outright refusal to increase wages. He also repeated Ecklund's threat to close the shop down if attempts were made to unionize. The employees gathered around him at the service desk to discuss further management's response to their request.

About 10 or 20 minutes later Thornhill approached the employees, who were still in the service desk area, and ordered them, in hostile tones, to get back to work or be fired. J. Collins expressed his anger at McKnight's message by cursing Thornhill and saying, "if they feel like that about us downtown and we don't deserve a raise or anything . . . why don't they just close the place up and just fire everybody." Thornhill replied with epithets of his own and told J. Collins to get to work on a certain car. J. Collins angrily stated he did not have needed equipment, and Thornhill replied in kind, again ordering J. Collins to get to work. J. Collins then said, "you don't like what I'm doing, m—f—, fire me." Thornhill cursed back, with another order to get to work, J. Collins repeated what he had just said, and Thornhill fired him.

I agree with the judge's finding that the impromptu employee meeting which occurred when McKnight returned from his encounter with Ecklund was protected concerted activity even though it occurred on company property and during company time. The employees had just been told not only that they would not get their requested wage increase, but that they would lose their jobs if they attempted to seek improvements through unionization. Despite this, the employees' reaction was relatively mild; a short-lived, peaceful discussion of management's refusal to grant any of their requests. In the absence of a specific grievance procedure, and because the meeting was in direct response to an unfair labor practice, the employees' brief and informal discussion was protected concerted activity. Accordingly, the Respondent violated Section

[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[1] All dates herein are in 1979 unless otherwise indicated.

8(a)(1) of the Act when Thornhill interrupted the meeting and, knowing its nature, threatened employees with discharge if they did not return to work. Likewise, Thornhill's firing of J. Collins violated Section 8(a)(1) of the Act, since it occurred during, and in response to, J. Collins' participation in protected concerted activity. J. Collins' conduct during the heated exchange with Thornhill clearly did not cause him to lose the protection of the Act. J. Collins' language was not particularly out of line with that generally used in the shop, it contained no threat, and it was uttered in direct response to the order by Thornhill to get back to work, an order that as seen above constituted another violation of Section 8(a)(1) of the Act.

In *Masonic & Eastern Star Home*, 206 NLRB 789 (1973), the Board held that, where there is no established grievance procedure, the conduct of a group of employees in stopping work and concertedly presenting a grievance concerning terms and conditions of employment is within the protection of the Act, and the discharge of employees for participating in such work stoppage violates the Act. In that case, employees reporting for the 7 a.m. shift requested a meeting with the respondent about certain grievances. They were told that if they did not immediately go to work they would be discharged, and this warning was repeated a few minutes later. By 7:30 to 7:45 a.m. all employees on the 7 a.m. shift had punched in on the respondent's timeclock, but they refused to go to work until the respondent agreed to talk with their representative about specific complaints. The respondent then fired the employees. The Board found that the purpose of the stoppage was to bring a form of economic pressure on the employer in support of the union's bargaining position and, as the employees were pursuing genuine grievances, their conduct was protected concerted activity. The Board held that "the concerted activity whether in support of grievances or as a means of bringing economic pressure to support the flagging negotiations, must be held protected unless it is found to be of a type which *Fansteel*[2] and like cases have held to be beyond the pale of legitimate protests."[3]

Similarly, in *Women Care*, 246 NLRB 753 (1979), employees reporting for work in the morning requested a meeting with their employer to discuss certain grievances. When told to get to work the employees refused to work until given a chance to air their complaints. The meeting was held, and resulted in 20 or 30 minutes of delayed services. The employer retaliated by discharging three employees at the end of the day. The Board decided that these employees had legitimate, mutual grievances which they concertedly presented to their employer, and the fact that the meeting took 20 to 30 minutes out of the working day was no justification for denying these employees their statutory right to engage in concerted activity. The Board found that the discharges in each case violated the Act.

Yet my colleagues insist that, in the instant case, Thornhill's interruption of the Central Motors employees' grievance discussion with an order to get back to work and his subsequent discharge of Julius Collins were justified because the employees had already had sufficient time (10 to 20 minutes) to discuss management's refusal to raise their wages and its threat of shop closure. The majority finds that the employees' conduct at that time was no longer protected concerted activity, notwithstanding that the employees had no formal grievance procedure to follow, were collectively and spontaneously reacting to a severe unfair labor practice, the threat of shop closure, and were doing so in a way that was peaceful and nondisruptive.[4] Surely 10 to 20 minutes of discussion under the these circumstances is not so excessive as to deprive employees of their Section 7 rights.

Furthermore, I do not find the language and conduct of J. Collins during the argument to be of the sort to carry him "beyond the pale" of the Act's protection. In *Thor Power Tool Co.*, 148 NLRB 1379, enfd. 351 F.2d 584 (7th Cir. 1965), the Board held that an employee's offensive characterization of his employer in the course of a grievance meeting was protected activity because it was part of the res gestae of the grievance discussion, and hence the discharge for the use of the particular language was unlawful. Enforcing the Board's order, the Seventh Circuit stated that "flagrant conduct of an employee, even though occurring in the course of the Section 7 activity, may justify disciplinary action by the employer. On the other hand, not every impropriety committed during such activity places the employee beyond the protective shield of the Act. The employee's right

[2] *NLRB v. Fansteel Metallurgical Corp.*, 306 U.S. 240 (1939). In that case, the Supreme Court found that the union's decision to take over and hold two of the employer's key buildings was not the exercise of a protected right to strike. "It was not a mere quitting of work and statement of grievances in the exercise of pressure recognized as lawful. It was an illegal seizure of the buildings in order to prevent their use by the employer in a lawful manner and thus by acts of force and violence to compel the employer to submit. When the employees resorted to that sort of compulsion they took a position outside the protection of the statute and accepted the risk of the termination of their employment upon ground aside from the exercise of the legal rights which the statute was designed to conserve." 306 U.S. at 256.

[3] 206 NLRB 789, 790.

[4] Indeed, the facts here are much more compelling than those in *Masonic Home* and *Women Care* because the work stoppage was motivated by an unfair labor practice rather than simply by economic grievances.

must be balanced against the employer's right to maintain order and respect."[5]

In *Crown Central Petroleum Corp. v. NLRB*, 430 F.2d 724, 731 (5th Cir. 1970), the court, in holding that the conduct of two employees during a grievance meeting was protected, stated:

> It has been repeatedly observed that passions run high in labor disputes and that the epithets and accusations are commonplace. Grievance meetings arising out of disputes between employer and employee are not calculated to create an aura of total peace and tranquility where compliments are lavishly exchanged. Adding our disclaimer to that of the Board, we do not condone the conduct of [the employees] in the meeting, but we do not feel that the interests of collective bargaining will be served by the external imposition of a rigid standard of proper and civilized behavior.

As noted above, the judge found that the language used by J. Collins was not out of line with that used in the auto shop; further I note that Thornhill responded to J. Collins with similar epithets.

Contrary to my colleagues, I further agree with the judge that the Respondent also fired S. Collins for his protected concerted activity, in violation of Section 8(a)(1) of the Act. Shortly after J. Collins' discharge, sometime that afternoon, S. Collins and McKnight decided to visit the International Association of Machinists' union hall. As they were preparing to go, Thornhill approached them and asked where they were going. After some angry words, including a reference to the firing of J. Collins, S. Collins stated that he and McKnight wanted to leave the shop for awhile, and Thornhill warned them to be back in an hour or they would be fired. At the union hall, S. Collins was given a pack of authorization cards. He distributed the cards to the shop employees when he returned to Central Motors less than an hour after he had left.

Later that afternoon, Thornhill called S. Collins into his office and fired S. Collins for threatening him earlier that day. S. Collins denied making any threats and Thornhill then said that S. Collins was fired for shoddy worksmanship. The judge found that while Thornhill had no knowledge of S. Collins' union activity, the discharge was in reaction to S. Collins' aggressive advocacy of better working conditions, his harsh and persistent criticism of management, and Thornhill's general impression of S. Collins as an agitator. Since there was no showing that S. Collins' behavior was unduly offensive or otherwise disruptive, the conclusion drawn by the judge was that he was fired for his protected activities and that his discharge accordingly violated Section 8(a)(1).

The majority contends that S. Collins' discharge stemmed from the argument between S. Collins and Thornhill that occurred immediately prior to S. Collins' visit to the union hall, in which J. Collins' discharge had been discussed and Thornhill had threatened S. Collins with violence. The majority characterizes that argument as "personal," and thus finds that the discharge was not violative of the Act. I would find, however, that discussion was a direct response to Thornhill's unlawful firing of J. Collins, and thus was protected activity itself. Therefore, even if I were to accept the majority's contention that the argument was the cause of S. Collins' later discharge, I would still find the discharge to be unlawful, since it was based on conduct found to be protected under the Act.

[5] 351 F.2d at 587.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten you with closure of our shop if you choose to be represented by a union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

CENTRAL MOTORS CORPORATION AND CENTRAL CADILLAC COMPANY

DECISIÓN

I. INTRODUCTION

STEPHEN J. GROSS, Administrative Law Judge. Central Cadillac Company is engaged in the retail sale of new and used automobiles in downtown Cleveland, Ohio. Used cars acquired by Central Cadillac often need servicing before they are in condition to be sold. Central Cadillac almost always has that servicing done by an affiliated company, Central Motors Corporation.[1]

[1] Central Cadillac and Central Motors thus have interrelated operations. (See also Tr. 10–11.) In addition they have a high degree of commonality in respect to who owns them, controls them, manages them, and sets their labor relations policy. See the various stipulations at Tr. 8–11; see also Tr. 33–34, 84, 175, 314. The two companies accordingly are a single employer for purposes of the Act: e.g., *Soule Glass & Glazing Co.*, 246 NLRB 792, 794 (1979); *Cowles Communications*, 170 NLRB 1596, 1599 (1968). Each of the companies is engaged in commerce for purposes of the act: See Tr. 7.

On October 29, 1979, Stanley Collins, who had been employed as a spray painter by Central Motors, filed a charge against Central Motors and Central Cadillac. A complaint dated December 7, 1979, issued by Region 8, followed.

The case went to hearing in Cleveland on April 24 and 25 and on July 8, 1980. Briefs have been filed by the General Counsel and, jointly, by Central Motors and Central Cadillac.

II. RESPONDENTS' THREAT OF PLANT CLOSURE

Starting about the middle of August 1979 a number of Central Motors' employees began complaining about their wage levels and such working conditions as the ventilation and lighting in their shop. While the employees did not formally designate a spokesman, Stanley Collins and, to a somewhat lesser extent, his brother Julius Collins served in that role. Stanley Collins had been working at Central Motors since May 15, 1978, as a spray painter. Julius Collins was employed by Central Motors as an auto mechanic. He had begun there in July 1978.

The shop foreman, Dan Thornhill, was sympathetic to the concerns raised by the employees and spoke to his superiors about them.[2] But sometime in early September Thornhill's superiors decided that they were unwilling to agree to any of the employees' requests and told Thornhill that. About 9 a.m. on September 10, 1979, Thornhill called the Central Motors employees together and reported that decision to the employees. The employees loudly expressed their anger, with the two Collins brothers doing much of the speaking. The degree of the employees' unhappiness was high enough so that Thornhill felt that an employee representative ought to talk directly to his superiors. Employee Sam McKnight agreed to go "downtown" with Thornhill. (All of the Central Motors/Central Cadillac executive offices are in the Central Cadillac building, about a mile away from the Central Motors shop.) Thornhill asked Stanley Collins if he wanted to go too. But Collins angrily waved Thornhill away.

Thornhill and McKnight then met with David Ecklund, an executive of both Central Motors and Central Cadillac (and an admitted supervisor) about the possibility of a wage increase for Central Motors' employees. Ecklund's response was that the Company was not in a position to do anything more for the employees. If the employees could not abide by that decision, he said, they could quit. Ecklund then went on to say something on the order of "in the event that Central Motors were unionized, we would have to close it down."[3] Respondents thereby violated the Act: e.g., *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

McKnight and Thornhill then returned to the Central Motors facility. Thornhill went directly into his office. McKnight went into the shop and told his fellow employees what Ecklund had said. The employees reacted by gathering near the facility's service desk to discuss management's response to their requests.

III. JULIUS COLLINS' DISCHARGE

About 10 or 20 minutes later Thornhill left his office, joined the employees in the service desk area, and told them, in hostile tones, that they would be fired if they did not get back to work.

Julius Collins, who was still furious over the message carried back by McKnight, reacted bitterly. He cursed at Thornhill[4] and said "if they feel like that about us downtown and we don't deserve raises or anything . . . why don't they just close the place up and just fire everybody."[5]

Thornhill angrily turned on Julius Collins, responded with epithets of his own, and told Collins that his work had been unsatisfactory and that Collins had better get to work on a car that Central Cadillac was waiting for. Collins either replied that he needed parts for the car that he did not have or said that he needed equipment that he did not have. But again, he did so angrily and loudly. Thornhill, using much the same tone and approach, again ordered Collins to get to work. At that point Collins said something on the order of "you don't like what I'm doing, motherfucker, fire me." Thornhill replied more or less in kind, with another order to get to work; Collins repeated what he had just said; and Thornhill fired him.[6] On the witness stand Thornhill said that he fired Collins because of Collins' insults and because he felt that Collins' retorts left him with "no choice. I was pushed into it."[7] I credit Thornhill's testimony in that respect as an accurate reflection of Thornhill's views at the time he fired Collins.[8]

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[2] Respondents do not dispute the General Counsel's allegation that Thornhill was a supervisor for purposes of the Act. (Not long after the events at issue in this proceeding Respondents fired Thornhill. He testified only after the General Counsel sought enforcement before a U.S. District Court of his subpoena.)

[3] Witness Ecklund, Tr. 267. See also witness McKnight ("Dave . . . told us if we tried to unite . . . among the workers, they will close the place down and wouldn't anyone work."): Tr. 159; witness Thornhill ("Dave Ecklund stated to Mr. McKnight that if there were any possible chance of a union organization at [Central Motors] that Mr. Porter [president of both Respondents] had, to quote Mr. Ecklund, '. . . dogmatically stated that he would close the whole place first.'"): Tr. 372.

[4] "Motherfucker" appears to have been the primary appellation that Collins assigned to Thornhill.

[5] Tr. 107.

[6] Six different witnesses testified about the exchange between Julius Collins and Thornhill that led to Collins' discharge: Julius Collins (once in the course of direct testimony and once on rebuttal); Stanley Collins; John Johnson (again, twice—on direct and on rebuttal); Ernest Piotrowski, Eric Golden, and Thornhill. The foregoing account of Julius Collins' discharge is based on an amalgamation of the testimony of those six witnesses. The nature of that amalgamation, in turn, is based on: (1) my sense that each of the witnesses recalled only parts of the exchange; (2) the demeanor of various witnesses; and (3) my view, after listening to all of the witnesses in this proceeding, about how Thornhill and Julius Collins would most likely have reacted in the situation that was confronting them at the time.

[7] Tr. 378, 381.

[8] Thornhill also said that his own prejudice against blacks figured in his decision to discharge Collins: Tr. 381. By that Thornhill seemed to mean that he was less tolerant of backtalk from black employees than from white employees. The weight to ascribe to that remark is unclear, however, since given Thornhill's personality it seems likely that he made the comment more for its shock value than because race actually played any material part in Thornhill's decision to discharge Collins.

IV. STANLEY COLLINS' DISCHARGE

The morning had brought a statement by Thornhill that the employees' requests for higher wages and better working conditions had been rejected; a report that Respondent's management would close down the shop if the employees sought to organize; and the discharge of Stanley's brother, Julius. Stanley Collins' reaction to all of that was to decide to talk to some union officials. He had previously had some dealings with International Association of Machinists and decided to go to the IAM union hall. Collins talked to McKnight about his plans and McKnight agreed to go along. When Collins and McKnight changed into their street clothes in preparation for their visit to the union hall, Thornhill came over to ask where they were going. Angry words followed, with Collins referring to, among other things, Thornhill's firing of Julius Collins. Somewhere in the course of the conversation Collins said that he wanted to leave the shop for awhile (Collins did not say anything to Thornhill about his plan to visit the IAM), and Thornhill responded "be back in an hour or you're fired." Also somewhere in the course of that conversation, Thornhill felt that Collins was threatening him with physical attack. That was not the case. But in view of that perception, Thornhill made threats of his own, including a statement that he was going to "blow off the top of [Collins'] head."[9]

While those words must have been highly provocative, no fight actually developed, perhaps because McKnight pulled Collins away.

At that point Stanley Collins and McKnight left for the IAM union hall. Julius Collins accompanied them. About that same time Thornhill called Central Cadillac to say that he had fired Julius Collins, that things were tense at Central Motors, and that he would like the assistance of Respondent' chief of security, Vince Tessier. Thornhill then drove to Central Cadillac to pick up Tessier. Thus Thornhill left Central Motors for Central Cadillac sometime after McKnight and Julius and Stanley Collins left for the IAM union hall.

At the union hall Stanley Collins was given a pack of authorization cards and he, McKnight, and Julius Collins returned to Central Motors, arriving less than an hour after they had left. Collins distributed the authorization cards to each of the employees in the Central Motors shop. At least some of the employees signed cards and Stanley Collins put the signed cards in his shirt pocket where their tops were clearly visible.[10]

Thornhill arrived at Central Cadillac about the time that Stanley Collins began distributing the authorization cards back at Central Motors. He picked up Tessier and told Tessier, without explanation, that he had fired one employee and was going to have to fire another.[11] Tessier remembered Thornhill as being "quite moody" and "uptight" throughout the drive back to Central Motors.[12]

The sequence of events thereafter is not entirely clear. It appears that Thornhill's first action on arriving back at Central Motors was to talk to Julius Collins, saying that he had tried to get Collins' final paycheck but that the office could not prepare it immediately and that Julius would have to wait a day or two for it. That led to a discussion about why Thornhill fired Julius Collins, with Thornhill telling Collins that the real reason for Collins' discharge was that Central Motors was phasing out its mechanical work so that the Company had no more need for the services of Collins, who was a mechanic. (That statement was without factual basis.)

Thornhill then called Stanley Collins into his office and told Collins that he was fired for having threatened Thornhill. (Thornhill apparently was referring to the exchange between himself and Stanley Collins just prior to Collins' departure for the union hall.) Collins told Thornhill that it was a lie to say that he had ever threatened Thornhill and an abrasive argument followed. Ultimately Collins asked Thornhill to call in the employees who had witnessed the earlier exchange. Thornhill agreed. McKnight, Johnson, and, perhaps, Golden each came into the office and each said that Thornhill had threatened Collins, not the other way around. At that point Thornhill shouted at Collins that he was fired for "shoddy workmanship." Thornhill's claim that Stanley Collins did shoddy work was without factual basis.

At the hearing in this proceeding Thornhill came up with still other reasons for firing Stanley Collins. According to Thornhill's testimony, he took that action because Collins is a "rotten apple"—that is, in Thornhill's view a belligerent and nasty agitator who kept arguing about such things as his brother's discharge.[13]

After their discharge the two Collins brothers asked Tessier for his help in regaining their jobs. Tessier, in an effort to calm things down, told them them that while he could not override Thornhill's actions he was sure that neither Collins would find any difficulties in obtaining a job elsewhere.

V. CONCLUSION

A. *Julius Collins' Discharge*

At senior management's behest Thornhill turned down all of the Central Motors employees' wage and working condition requests. Central Motors official Ecklund capped that with an even tougher response plus a statement that, as noted earlier, was in clear violation of the Act ("in the event Central Motors were unionized, we would have to close it down").

The employees' response was relatively mild—an amorphous meeting in a central area of the shop. While that occurred on company property and on company time the meeting came within the protection of the Act.

[9] Tr. 162–163.

[10] Undisputed testimony indicated that all of the Central Motors employees signed cards. But the cards themselves were not introduced into evidence.

[11] Tessier remembered Thornhill saying that he was "intent on discharging two personalities": Tr. 323. But Tessier seemed to have trouble recalling the events of the day with any degree of precision; and in view of the actual sequence of events, it is improbable that Thornhill said that he had two employees still to fire.

[12] Tr. 323.

[13] Tr. 383, 384, 400–402. Thornhill testified that, as in the case of Julius Collins' discharge, his own prejudice against blacks also entered into his decision to fire Collins: Tr. 383, 401–402. See fn. 8, supra.

It was nonviolent and nondestructive, the employees' purpose was to discuss the employer's response to the employees' wage and working condition requests, there was no attempt to take over the shop, and it was short-lived.[14] Moreover the employees were not represented by a union, there was no specific grievance procedure for the employees to follow,[15] and the meeting was in part a result of the employer's unfair labor practice.[16]

Accordingly, when Thornhill interrupted the meeting, and, knowing its nature, told the employees that they would be fired if they did not return to work,[17] Central Motors again committed an unfair labor practice.[18]

Julius Collins responded to that statement as a spokesman for all the employees. That led Thornhill to focus on him and, in turn, resulted in Collins angrily refusing a direct order of Thornhill, his foreman, cursing at Thornhill and then telling Thornhill that if Thornhill did not like what he was doing, to fire him. Thornhill thereupon fired Collins because of the "insult" ("motherfucker") and because he felt that the nature of Collins' retorts gave him no other choice. In sum, Thornhill fired Julius Collins for the manner in which Collins expressed himself, rather than for the subject matter of Collins' remarks.

The question is thus whether the manner in which Julius Collins expressed himself merits protection by the Board. And that question, in turn, raises several issues. The first has to do with Collins' profanity when, on behalf of other employees as well as himself, he responded to Thornhill's order that the employees get back to work or face discharge.

Employees are not required to use the language of diplomacy when concertedly addressing an agent of their employer about matters relating to their working conditions. Accordingly an employer may not lawfully discipline employees for lack of delicacy in discussing matters protected by the Act. And Collins' opening salvo at Thornhill just prior to his discharge did relate to such matters. On the other hand, language that is far enough out of line can transform a statement that ordinarily would be protected into one that is not.[19] And Collins' language was very unpleasant. But the situation was one in which the employees were in the midst of collectively reacting to a management statement (Ecklund's that was harsh, disappointing, and in violation of the Act; Collins' remarks responded directly to a second statement (by Thornhill) in violation of the Act; there was no indication that the terminology that Collins used was particularly out of line with that generally used in the Central Motors shop; and it contained no threat.

The degree of a statement's abusiveness needed to result in withdrawal of the act's protection necessarily depends upon the circumstances in which the statement is uttered: *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979); *NLRB v. Thor Power Tool Co.*, supra. And in view of the extraordinary circumstances of the day, I recommend that the Board conclude that Julius Collins' remarks remained protected: See *Thor Power Tool Co.*, supra, 148 NLRB at 1380; *Consumers Power Co.*, 245 NLRB 183, 187 (1979).

Since it was those remarks that led Thornhill to focus on Collins, and to do so threateningly, that response by Thornhill arguably represented yet another violation of the Act. In any case Collins and Thornhill then launched into a dialogue that did not refer to the work or actions of any employee other than Collins himself, and in which Collins again cursed at Thornhill. It was that dialogue that led to Collins' discharge. Looking at the situation narrowly, therefore, Collins was not fired for any concerted behavior. But the fact is that Collins' complaints and curses during that dialogue and his brief refusal to work were inextricably linked both to the employer's unfair labor practices and to the immediately preceding concerted activity by Collins and his fellow employees.[20] In that light the purposes of the act compel the conclusion that Collins' statements and behavior remained protected concerted activity.[21]

B. *Stanley Collins' Discharge*

As for Stanley Collins' discharge, the General Counsel argues that the real reason Collins was discharged was because of his distribution of union authorization cards. I do not find that to be the case. While Ecklund's statement indicates that Respondents may have been antiunion, Thornhill's relationship with Respondents was such that the preferences of his superiors would have meant little to him. And there was no indication that Thornhill was personally concerned about union activism. Moreover Thornhill denies that he knew anything about Stanley Collins' distribution of union authorization cards at the time he fired Collins and I credit that denial. For one thing it appears that Thornhill had made up his mind that he was going to fire Collins by the time he went to get Tessier, which was before Collins handed out the cards. For another, the timing of the events on September 10 indicates that Thornhill was not in the shop when Collins was handing out the cards. Lastly, Thornhill was so agitated by the time he called Collins into his office

[14] See *Golay & Co.*, 156 NLRB 1252 (1966), enfd. 371 F.2d 259 (7th Cir. 1966), cert. denied 387 U.S. 944 (1967).

[15] See *Meilman Food Industries*, 234 NLRB 698 (1978); *Washington Aluminum Co.*, 370 U.S. 9, 14–15 (1962).

[16] See, e.g., *Meilman Food*, supra, 234 NLRB at 712.

[17] See part III, supra.

[18] See, e.g., *Crestline Memorial Hospital Assn.*, 250 NLRB 1439, 1440, 1447 (1980).

[19] E.g., *Clark Equipment Co.*, 250 NLRB 1333 (1980); *NLRB v. Thor Power Tool Co.*, 351 F.2d 584, 587 (7th Cir. 1965), enfg. 148 NLRB 1379 (1964).

[20] See *Thor Power Tool Co.*, supra, and *Consumers Power Co.*, supra, (both finding that a profane response by an employee to a supervisor was part of the "res gestae" of the immediately proceeding grievance meeting).

[21] Some evidence indicated that Central Motors was not entirely satisfied with Julius Collins' work performance. But Thornhill's testimony and the sequence of events leading to Collins' firing show that Collins' work performance had little if anything to do with Thornhill's decision to fire him. Further, sometime during the day that Julius Collins was fired, presumably on the ride to or from Central Cadillac, Thornhill asked McKnight to help Thornhill solicit business for Central Motors. When McKnight returned to Central Motors, he discussed that proposal with Julius Collins. Collins recommended that McKnight turn Thornhill down on the ground that that task was Thornhill's job, not McKnight's. While that kind of advice would be the kind that would tend to irritate management, the record does not indicate that Collins' remark played any part in his discharge.

on the way to firing him that it is unlikely that Thornhill would have noticed the ends of the authorization cards protruding from Collins' pocket.

Another possibility was that Thornhill fired Collins because of Thornhill's perception that Collins threatened him with physical harm. If that was the case the discharge would be no violation even though Collins in fact made no such threat. But that perceived threat does not appear to have been the basis for Thornhill's actions. Thornhill's testimony fails to refer to any threats by Collins as the reason for the discharge. Moreover the statements of several employees at the time in question exonerating Collins must in the very least have raised doubts in Thornhill's mind about whether Collins in fact made any threat.

Thornhill's actual reasons for firing Stanley Collins will never be clear—not even, probably, to Thornhill. But the circumstances of the day, plus Thornhill's testimony, add up to the likelihood that Collins' discharge stemmed from Collins' aggressive support of the employees' wage and working condition requests and his vociferous criticism of management's behavior. Collins' work was, and had been, satisfactory. The only notable events involving Collins on the day he was fired (besides the union activity and the perceived threat, as discussed above) were Collins' remarks about the employees' wages and working conditions, Julius Collins' discharge, and the like. And Thornhill testified that he fired Stanley Collins because, like Julius Collins, Stanley "agitated me," he was a "rotten apple," a "smart ass," who was "belligerent and nasty."[22] Under the circumstances that translates into an expression by Thornhill that under the stress-laden circumstances of September 10, he considered unacceptable the combination of Collins' continuing demands for improvements in the Central Motors employees' wages and working conditions and the hostile manner in which Collins expressed those demands. Since there was no showing that Collins' behavior was unduly offensive or otherwise disruptive, the conclusion must be that he was fired for his protected activities and that his discharge accordingly violated Section 8(a)(1).

[22] Tr. 384, 402.

CONCLUSIONS OF LAW

1. Respondents Central Cadillac Company and Central Motors Corporation are a single employer for purposes of the Act.
2. Respondents violated Section 8(a)(1) when their agent, David Ecklund, told an employee that if Central Motors' employees were to choose to be represented by a union, Respondents would close down Central Motors.
3. Respondents violated Section 8(a)(1) of the Act when their agent, Dan Thornhill, told employees whom he knew to be engaged in protected activity to return immediately to work or be fired.
4. Respondents violated Section 8(a)(1) of the Act by discharging employees Julius and Stanley Collins because of their protected activities.
5. The foregoing unfair labor practice affected commerce within the meaning of Section 10(a) of the Act.
6. Respondents did not violate Section 8(a)(3).

THE REMEDY

The recommended Order will require the following of Respondents:

1. To cease and desist from engaging in the unfair labor practices set forth in part VI, above.
2. To cease and desist from interfering with, restraining, or coercing, in any like or related manner, its employees in the exercise of the rights guaranteed in Section 7 of the Act.
3. To: (a) reinstate Julius and Stanley Collins to the positions they previously held or, if those positions no longer exist, to substantially equivalent positions, and (b) make those employees whole, for any losses they may have suffered as a result of Respondents' unlawful discharge of them. Loss of earnings shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon[23] to be computed as prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).[24]
4. To notify their employees of the action being ordered by the Board.

[Recommended Order omitted from publication.]

[23] See *Isis Plumbing Co.*, 138 NLRB 716 (1962).
[24] See also *Olympic Medical Corp.*, 250 NLRB 146 (1980).